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SUPREME COURT OF THE UNITED STATES.

No. ~~295~~. 114.

JOHN HOGAN, PLAINTIFF IN ERROR,

vs.

DANIEL D. PAGE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

No. 235.

JOHN HOGAN, PLAINTIFF IN ERROR,

vs.

DANIEL D. PAGE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

INDEX.

	Original.	Print.
Writ of error to the U. S. Supreme Court	A.	1
Citation	B.	2
Writ of error to land court	1	3
Return to writ	2	3
Petition	3	4
Summons	4	4
Sh'ff 's return. Answer	5	5
Trial and judgment	6	6
Motion for new trial overruled	7	6
Bill of exceptions	8	7
Confirmation of board of commissioners	8	7
Certificate 1,276	9	8
Translation of grant	10	8
Receipts	11	9
Plat	13	10
Testimony of Lebeau	18	12
Deed of Raymond *et al.* to Hoga	19	13
Deposition of Bacanne	22	15
Plaintiff's instructions refused	26	17
Defendant's instruction given	27	18
Verdict	28	18
Motion for new trial	28	18
Assignment of errors	29	19
Submission of cause	30	19
Judgment	30	20
Opinion of the court	31	20
Bond on writ of error	32	21
Clerk's certificate	33	21

A.

THE UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of the supreme court of the State of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, at March term, 1862, between John Hogan, appellant, and Daniel D. Page, appellee, a manifest error hath happened, to the great damage of the said John Hogan, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right, and according to the laws and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, this fifth of December, in the year of our Lord one thousand eight hundred and sixty-two.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the district of Missouri, dated as aforesaid.

BEN. F. HICKMAN,
Clerk C. C. U. S., Missouri District.

Allowed by BARTON BATES,
Presiding Judge of the Supreme Court of Missouri.

STATE OF MISSOURI,
County of St. Louis, ss:

Britton A. Hill, attorney for the plaintiff in error in the within entitled cause, being duly sworn, says, that on the 12th day of December, A. D. 1862, he lodged in the office of the clerk of the supreme court of the State of Missouri a copy of the within writ of error, with the following endorsement: "Supreme Court U. S. John Hogan, pl'ff in error, *vs.* Dan'l D. Page, def't in error.

"Copy of a writ of error, lodged in pursuance of the statute of the United States in such case made and provided for the above-named

Daniel D. Page, defendant in error. Britton A. Hill, att'y for plaintiff in error." And further affiant saith not.

BRITTON A. HILL.

Sworn to and subscribed before me this 12th day of December, A. D. 1862.

ANDREW W. MEAD,
Clerk of Supreme Court of Mo.

STATE OF MISSOURI, *ss:*

In obedience to the mandate of the within writ, I, Andrew W. Mead, clerk of the supreme court of the State of Missouri, held at St. Louis, herewith transmit to the United States Supreme Court a full, true, and complete transcript of the record and proceedings in the within entitled cause as fully as the same remain of record and on file in my office.

In testimony whereof, I hereto set my hand and affix the seal of said court at office in the city of St. Louis, this 15th day of January, A. D. 1863.

[SEAL.]

A. W. MEAD, *Clerk.*

B.

The United States of America to Daniel D. Page, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Missouri, wherein John Hogan is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Barton Bates, presiding judge of the supreme court of the State of Missouri, this fifth day of December, in the year of our Lord one thousand eight hundred and sixty-two.

BARTON BATES,
Presiding Judge of the Supreme Court of Missouri.

Original citation to return.

Executed the within citation by reading the same to Daniel D. Page, also by leaving a true copy of the same with the said Daniel D. Page, in the city of St. Louis, in the eastern district of Missouri. December 22d, 1862.

D. A. RAWLINGS,
U. S. Marshal.
By G. E. ANDERSON,
Dep't y.

1 *Writ of error.*

STATE OF MISSOURI, *ss:*

Be it remembered that heretofore, to wit, on the fifth day of March, A. D. 1859, a writ issued from the office of the clerk of the supreme court of the State of Missouri, held at St. Louis, of which the following is a copy, to wit:

THE STATE OF MISSOURI, *ss:*

The State of Missouri to the honorable the St. Louis land court in said State, greeting:

Whereas in the record and proceedings in a certain cause lately pending in the land court held in and for the county of St. Louis, wherein John Hogan was plaintiff and Daniel D. Page was defendant, in a civil action, manifest error hath intervened, to the great damage of said plaintiff, as by his complaint we are informed: Now, being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid in that behalf, command you that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said court, so that we may have before us at our supreme court, to be begun and held in the city of St. Louis, in the county of St. Louis, in said State, on the third Monday in March instant, so that our judges of our supreme court, on inspecting the record and proceedings aforesaid, may cause to be further done
2 therein, for correcting the error, what of right and according to law ought to be done.

Witness William S. Glanville, clerk of our said supreme court, at office in the city of Saint Louis, the fifth day of March, eighteen hundred and fifty-nine.

[L. S.]

WM. S. GLANVILLE, *Clerk.*

Return to writ.

To the foregoing writ the clerk of said land court made the following return, to wit:

STATE OF MISSOURI.
County of St Louis, ss:

In obedience to the command of the within writ, I, Charles A. Mantz, clerk of the St. Louis land court, within and for the county of St. Louis, certify the foregoing transcript to be a true and correct copy of the record and proceedings had (as required) in the case of John Hogan, plaintiff, against Daniel D. Page, defendant, as fully as the same remains of record in my office.

In testimony whereof, I hereto set my hand and affix the seal of the St. Louis land court, at office in the city of St Louis,
[L. S.] this eighth day of March, A. D 1859.

CHAS. A. MANTZ, *Clk.*

And on the said eighth day of March, 1859, there was filed in the office of the clerk of the supreme court of the State of Missouri, held at St. Louis, a transcript, which is in the words and figures following, to wit:

Petition.

STATE OF MISSOURI,
County of St. Louis, ss:

3 Be it remembered that on the ninth day of September, in the year of our Lord one thousand eight hundred and fifty-seven, there was filed in the office of the clerk of the St. Louis land court a petition, which petition is in the words and figures following, to wit:

In the St. Louis land court, October T., 1857.

JOHN HOGAN, plaintiff,
vs.
DANIEL D. PAGE, def't.

Plaintiff states that on the second day of March, A. D. eighteen hundred and fifty-six, he was lawfully entitled to the possession of the following described parcel or tract of land, to wit: Begin at a point in the north line of the U. S. survey, No. 1276, where the first fence west of the dwelling-house of Gulliaime Hogle crosses the said line; thence west along the said north line of the aforesaid survey until it intersects the line dividing between the U. S. surveys Nos. 2499 and 2692; thence south along said last-mentioned dividing line to the south line of said survey No. 1267; thence east along said south line to the fence first above mentioned; thence north along said fence to the place of beginning. The aforesaid premises are a part of a larger tract of one by forty arpens of land confirmed of the thirteenth day of November, A. D. 1811, to Louis Lemonde, in his lifetime claiming the same as assignee and legal representative of August Conde, and which was afterwards and on the second day of March, A. D. 1850, and after the death of the said Louis,
4 conveyed by his heirs-at-law, Angelique Raymond, formerly Angelique Lemonde, together with her husband, Abraham Raymond, and Ann Fontaine, formerly Ann Lemonde, and Baptiste Lemonde, to the plaintiff; and the said plaintiff so being entitled to the possession of said premises, the defendant afterwards and on or about the day of , A. D., but the exact day is not known to the plaintiff, entered upon and into the same, and unlawfully withheld from the plaintiff the possession thereof, to his damage the sum of three hundred dollars.

TRUSTEN POLK,
Att'y for Pl'ff.

John Hogan, the above-named plaintiff, makes oath and says, that the aforegoing petition, and the matters therein as stated, he believes to be true.

JOHN HOGAN.

Sworn to and subscribed before me this 9th day of September, 1857.

C. A. MANTZ, *Clerk.*

Summons.

Upon the filing of the above petition the clerk then issued to the sheriff of St. Louis county a summons; which summons is in the words and figures following, to wit:

The State of Missouri to the sheriff of St. Louis county, greeting:

We command you to summon Daniel D. Page to appear before the judge of our St. Louis land court, on the first day of the next term thereof, to be held in the city of St. Louis, within and for the county of St. Louis, on the second Monday of October next, then and there to answer the complaint of John Hogan, as set forth in the annexed petition; and have you then and there this writ.

Witness Charles A. Mantz, clerk of our said court, with the seal thereof hereto affixed, at office in the city of St. Louis, this 10th day of September, in the year of our Lord, 1857.

[L. S.]

CHARLES A. MANTZ, *Clerk.*
By SAM. DICKS, *D. C.*

Sheriff's return.

Upon which summons the sheriff made his return in the words and figures following, to wit:

Executed this writ in St. Louis county on the 10th day of September, 1857, by delivering to Daniel D. Page a copy of the writ and petition as furnished by the clerk.

JAMES CASTELLO, *Sh'ff.*
By GEO. N. STEVENS, *Dep'ty.*

And afterwards the following proceedings were had in this cause, to wit:

Answer.

October term, 1857.—Friday, October 16th, 1857.

JOHN HOGAN
vs.
DANIEL D. PAGE. } Answer filed in this cause.

Which answer is in the words and figures following, to wit:

JOHN HOGAN
vs.
DANIEL D. PAGE. } In the St. Louis land court.

Said defendant admits that he is in possession of nineteen ninety-sixth parts ($\frac{19}{96}$) undivided of the tract of land in said petition described, but denies that he is in possession of any other portion

6 of the same, and denies that at the time in said petition named, or any other time, it was confirmed to Louis Lemonde, either as assignee of August Conde or otherwise, and he has not knowledge or information sufficient to form a belief whether the persons in said petition named as the heirs-at-law of said Lemonde are so or not, and denies that said plaintiff is lawfully entitled to the possession of said part or is entitled to any damages.

J. R. SHEPLEY, *Att'y for Pl'ff.*

Daniel D. Page, being duly sworn, on his oath states that said answer and the matters and things stated he believes to be true.

D. D. PAGE.

Sworn to and subscribed before me this 13th day of October, 1857.

JEREMIAH F. YOUNG, [L. S.]
Notary Public.

Trial and judgment.

And afterwards the following further proceedings were had in this cause, to wit:

October term, 1858.—Tuesday, November 23d, 1858.

JOHN HOGAN *vs.* DANIEL D. PAGE. } Judgment.

Now, at this day, come said parties, by their respective attorneys, and thereupon come also a jury, to wit: Hudson Watson, William McCarthy, St. Clair Forrester, Nathaniel Robbins, Wm. Burroughs, James O. Harra, Alexander Johnson, Henry Stamm, Patrick Flemming, Abraham Wood, Robert Dudley, and Ignatz Uhrig,
7 twelve good and lawful men, who being duly elected, tried, and sworn well and truly to try the issues joined between the parties herein, and a true verdict render according to the evidence, therefore the trial progressed, and being terminated, the jury as aforesaid, on their oaths aforesaid, find for the defendant. It is thereupon ordered and adjudged by the court that the plaintiff take nothing by his said suit, but that the defendant go hence without day and recover of said plaintiff his costs and charges herein expended, and have execution therefor. Verdict filed in this cause.

Motion for new trial filed, &c., overruled.

And afterwards the following further proceedings were had in this cause, to wit:

Wednesday, November 24th, 1858.

JOHN HOGAN *vs.* DANIEL D. PAGE. } Motion for new trial filed in this cause—reasons filed.

And afterwards, to wit, on the same day, the following further proceedings were had in this cause, to wit:

JOHN HOGAN
vs.
DANIEL D. PAGE.

Now, at this day, the motion and reasons filed in this cause is submitted to the court, and the court having heard and being now fully advised of and concerning the premises, doth order and adjudge that said motion and reasons be overruled.

And afterwards the following further proceedings were had in this cause, to wit:

8 *Bill of exceptions.*

Friday, November 26th, 1858.

JOHN HOGAN
vs.
DANIEL D. PAGE. } Bill of exceptions filed in this—cause.

Which bill of exceptions is in the words and figures following, to wit:

JOHN HOGAN
vs.
DANIEL D. PAGE. } In the St. Louis land court.—October term, 1858.

Be it remembered that the following was all the evidence produced on the trial of this cause:

The plaintiff, to maintain the issues on his part, gave in evidence the following confirmation papers, being the action of the board of commissioners for the confirmation of land titles in the Territory of Louisiana, to wit:

Confirmation of board of commissioners.

Conde. Du dix Janvier, mil sept cent soixante dix. Sur la demande du Sieur August Condé, chirurgien á Saint Louis nois loi avous conced dé et conceddons a titre de proprieté pour liu ses hoirs ou ayant causes une terre situeé a la Grande Prairie du dit village St. Louis, contenant deux arpents de large sur guarente de profondeur tenante d'un coté a la terre du St. Hervieux et de láutre cote a la terre de Louis Deshitres pour en jonir par liu sienr Condé et res ayent causes en pleine propriete aux conditions et establir la ditte terre sous l'an et jour, et quelle sera sujette aux charges pub-
9 liques et autres quil plaira a sa Majesté d'y imposer.

Donné a St. Louis le dit jour et an et avous.

(Signed) LABUXIERE.

Livre Terrien No. 1, page 31.

To Frederick Bates, esq., recorder of land titles for the Territory of Louisiana:

SIR: Take notice that I claim a tract of land situate in Big Prairie, district of St. Louis, formerly the property of Mr. Condé, containing

one arpen by 40, as appear by the concession remaining in your office, book No. 1, page 31.

St. Louis, 23d May, 1808.

his
LOUIS + LEMONDE.
mark.

Witness: M. P. LEDUC. (See book D, p. 165.)

Cert. 1276.

WEDNESDAY, *November* 13, 1811.

Board met. Present: John B. C. Lucas, Clement B. Penrose, and Frederick Bates, commissioners.

Louis Lemonde, assignee of August Condé, claiming one by forty arpents of land, situate in Big Prairie, district of Saint Louis, produces a concession from St. Auge and Labuxiere, L. G., dated 10th January, 1770. The board grant to the representatives of Auguste Condé forty arpents of land, under the provisions of the 2d section of the act of Congress entitled "An act respecting claims to land," and passed 3d March, 1807, and order that the same be conveyed conformably to possession (survey at the expense of the United States) as ascertained by report of survey, dated as above, 10th January, 1770.

Board adjourned till to-morrow, nine o'clock a. m.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.
FREDERICK BATES.

10 See minutes of the board, book No. 5, p. 398, 399, and 407.

RECORDER'S OFFICE,
St. Louis, May 1st, 1851.

I certify that the foregoing is a full and complete transcript from the books, records, files, and documents in this office, of the claim of Louis Lemonde, assignee of Auguste Conde, to forty arpents of land, situated in Grande Prairie field of St. Louis.

ADOLPHE RENARD,
U. S. Recorder of Land Titles in the State of Missouri.

Translation of grant to Condé.

Condé. The 10 January, 1770, upon the demand of Mr. August Condé, surgeon, in St. Louis, we have conceded, and we do concede to him, his heirs, or assigns, in fee-simple, a tract of land situated in the Grand Prairie, of the said village of Saint Louis, containing two arpents in width by forty arpents in depth, bounded on one side by the land of Mr. Harvieux, and on the other side by the land of Louis Dehetres, in order that himself, the said Condé, and his representatives may enjoy the same, in full property, under the conditions to

settle the said land within one year and a day; and that the same is to remain liable to the public and other charges which his Majesty might be pleased to impose thereon.

Given in Saint Louis the said day, and we have signed.

LABUXIERE.

L. T., 1, p. 31.
May 1st, 1851.

Correctly translated.

ADOLPH RENARD.

11 The following is a copy of the receipt on file in this office of the certificate, No. 1276, issued on the 13th November, 1811, by the board of commissioners to Louis Lemonde, assignee of August Condé, in virtue of their confirmation of forty arpents in the Grand Prairie fields of Saint Louis, as translated in the foregoing document, to wit:

Receipts.

"Received, St. Louis, January 27, 1825, of the recorder of land titles, the commissioner's certificate of confirmation, No. 1276, relating to a field lot in the Big Prairie, St. Louis county.

his
" LOUIS + LEMONDE.
mark.

" Test: M. P. LEDUC."

ADOLPH RENARD,
Recorder Land Titles.

7 December, 1852.

Also the following receipt:

"Received, St. Louis, January 27, 1825, of the recorder of land titles, the commissioner's certificate of confirmation, No. 1276, relating to a field lot in the Big Prairie, St. Louis county.

his
"(Signed) LOUIS + LEMONDE.
mark.

" Test: M. P. LEDUC,
"*Office of the Recorder of Land Titles.*"

ST. LOUIS, 11*th January*, 1854.

I certify that the above is a correct copy of the receipt filed in this office in lieu of certificate of confirmation, No. 1276, of the old board of commissioners in favor of Conde's representatives.

ADOLPH RENARD,
U. S. Recorder of Land Titles in the State of Missouri.

Also the United States survey, No. 1276, as follows:

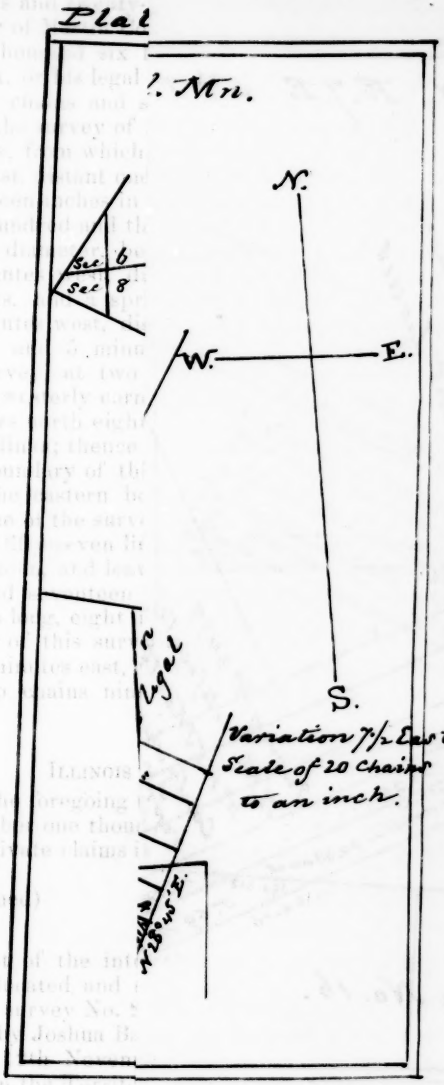
Survey No. 1276.

12 Plat and description of the survey of a lot of forty arpens, or thirty-four acres and thirty-three hundredths of an acre of land situated in the Grande Prairie (common field) of Saint Louis, in township forty-five. north of the base line, range seven east, of the 5th principal meridian, in the State of Missouri, executed by William H. Cozens, deputy surveyor, in the years eighteen hundred and fifty and eighteen hundred and fifty-one, under instructions from the surveyor general for the States of Illinois and Missouri, dated the 9th of May, eighteen hundred and forty-six; this being the southwesterly half of the lot of two by forty arpens, which was granted to Auguste Condé on the 10th of January, 1770, by St. Auge and Labuxiere, authorized officers of the post of St. Louis, in the province of Upper Louisiana, (see livre Terrien, No. 1, p. 31,) and having been claimed before Frederick Bates, United States recorder of land titles, by Louis Lemonde, as per notice, on this 23d May, 1808, (see book D, p. 165,) to the extent of 1 by 40 arpens, "formerly the property of Mr. Conde." with a reference to the aforesaid concession, recorded in livre Terrien, No. 1, fo. 31, was confirmed to the "legal representatives of August Conde," under the provisions of the 2d section of the act of Congress of the 3d March, 1807, entitled "An act respecting claims to land in the Territories of Orleans and Louisiana," by the board of commissioners appointed under the 5th section of the act of Congress approved on the second March, 1805, en-
13 titled "An act for ascertaining and adjusting the titles and claims to land within the Territory of Orleans and the district of Louisiana" for which confirmation "certificate No. 1276" was issued by the said board on the 13th November, 1811. (See minutes of the board of comm'rs, No. 5, p. 399; also American State Papers, vol. 2, p. 601, edition of 1834.)

(Here follows map, page 13.)

	Inferences.	Areas.
Survey No. 1276, with section No.	16	5.69 acres.
Do. " " " survey "	2499	17.18 "
Do. " " " " "	2692	11.46 "
	Aggregate	34.33 acres.

14 Description: Beginning at an old stone, the southerly corner of the lot of Francis Dunegan did Beaurosier, survey number three thousand two hundred eighty-five, and easterly corner of this survey; thence north, sixty-one degrees west, with the northeastern boundary of this survey and southwestern boundary of the survey of Francis Dunegan; at sixteen chains and eighty-eight links intersect the northern line of fractional section sixteen, township forty-five north, range seven east, of the fifth principal meridian, and a line of survey number two thousand four hundred ninety-nine, in the name of Martin Contz, or his legal representatives, at a stone; at seventy-


Plat
Sec 6
Sec 8
N.
W.
E.
S.
Variation 7½ East
Scale of 20 Chains
to an inch.

Survey No. 1276.

12 Plat and description of the survey of a lot of forty arpens, or thirty-four acres and thirty-three hundredths of an acre of land situated in the Grande Prairie (common field) of Saint Louis, in township forty-five, north of the base line, range seven east, of the 5th principal meridian, in the State of Missouri, executed by William H. Cozens, deputy surveyor, in the years eighteen hundred and fifty and eighteen hundred and fifty-one, under instructions from the surveyor general for the States of Illinois and Missouri, dated the 9th of May, eighteen hundred and forty-six; this being the southwesterly half of the lot of two by forty arpens, which was granted to Auguste Condé on the 10th of January, 1770, by St. Ange and Labuxiere, authorized officers of the post of St. Louis, in the province of Upper Louisiana, (see livre Terrien, No. 1, p. 31,) and having been claimed before Frederick Bates, United States recorder of land titles, by Louis Lemonde, as per notice, on this 23d May, 1808, (see book D, p. 165,) to the extent of 1 by 40 arpens, "formerly the property of Mr. Conde," with a reference to the aforesaid concession, recorded in livre Terrien, No. 1, fo. 31, was confirmed to the "legal representatives of August Conde," under the provisions of the 2d section of the act of Congress of the 3d March, 1807, entitled "An act respecting claims to land in the Territories of Orleans and Louisiana," by the board of commissioners appointed under the 5th section of the act of Congress approved on the second March, 1805, en-
13 titled "An act for ascertaining and adjusting the titles and claims to land within the Territory of Orleans and the district of Louisiana," for which confirmation "certificate No. 1276" was issued by the said board on the 13th November, 1811. (See minutes of the board of comm'rs, No. 5, p. 399; also American State Papers, vol. 2, p. 601, edition of 1834.)

(Here follows map, page 13.)

	Inferences.	Areas.
Survey No. 1276, with section No.	16	5.69 acres.
Do. " " " survey "	2499	17.18 "
Do. " " " " "	2692	11.46 "
	Aggregate	34.33 acres.

14 Description: Beginning at an old stone, the southerly corner of the lot of Francis Dunegan did Beaurosier, survey number three thousand two hundred eighty-five, and easterly corner of this survey; thence north, sixty-one degrees west, with the northeastern boundary of this survey and southwestern boundary of the survey of Francis Dunegan; at sixteen chains and eighty-eight links intersect the northern line of fractional section sixteen, township forty-five north, range seven east, of the fifth principal meridian, and a line of survey number two thousand four hundred ninety-nine, in the name of Martin Contz, or his legal representatives, at a stone; at seventy-

nine chains and twenty-four links intersect the most western line of the survey of Martin Contz, and the eastern boundary of survey number two thousand six hundred ninety-two, in the name of Joseph Genereaux, or his legal representatives, at a stone; at one hundred seventeen chains and seventy-one links an old stone, the westerly corner of the survey of Francis Dunegan and the northerly corner of this survey, from which a double cherry tree bears south eighty-seven degrees east, distant one hundred eighty-one and a half links; a cherry tree, fourteen inches in diameter, bears south two degrees east, distant one hundred and thirty-one and a half links; a pin oak, thirteen inches in diameter, bears north seventy-nine degrees and fifteen minutes west, distant one hundred twenty-three and a half
15 links, and a spring bears south eight degrees and fifteen minutes west, distant two hundred forty-eight links; thence south 29° and 5 minutes west, with the northwestern boundary of this survey, at two chains ninety-one and two-thirds links, a stone, the westerly corner of this survey, from which the aforesaid spring bears north eighty-four degrees east, distant one hundred four and a half links; thence south sixty-one degrees east, with the southwestern boundary of this survey, at forty chains and eleven links, intersect the eastern boundary of Joseph Genereaux's survey and western line of the survey of Martin Coontz, at a stone at ninety-five chains and fifty-seven links, intersect the northern line of fractional section sixteen, and leave the tract of Martin Coontz, at a stone at one hundred seventeen chains and seventy-three links, a stone, sixteen inches long, eight inches wide, and four inches thick, the southerly corner of this survey; thence north twenty-eight degrees and forty-five minutes east, with the southeastern boundary of this survey, at two chains ninety-one and two-third links, the beginning corner.

OFFICE OF THE SURVEYOR GENERAL FOR
ILLINOIS AND MISSOURI, *Saint Louis, May 5th*, 1851.

16 The foregoing record of the plat and description of survey, number one thousand two hundred seventy-six of the general series of private claims in Missouri, has been examined, and is hereby approved.

(Signed) M. LEWIS CLARK,
Surveyor General.

Statement of the interferences of survey No. 1276, with lands previously located and surveyed, viz: 1st. To the extent of $11\frac{46}{100}$ acres, with survey No. 2692, of a location made on the 12th December, 1817, by Joshua Barton for Edward Bates, of certificate No. 19, issued the 12th November, 1815, by Frederick Bates, recorder of land titles in the Territory of Missouri, to Joseph Genereaux, or his legal representatives, for 160 acres of land, in conformity with the provisions of the act of 17th February, 1815, for the relief of the inhabitants of the county of New Madrid, who suffered by earthquakes. Survey No. 2692 was executed on the 23d June, 1819, by Joseph C. Brown, under contract with the surveyor general of the 31st March, 1817. It is recorded on page 107 of book "A" in this

office; and it appears that a transcript thereof was returned to the recorder of land titles by the surveyor general on the 5th February, 1823, and that a patent certificate, numbered 318, was issued on it by the recorder on the 4th February, 1823, and delivered to Edward Bates. 2d. To the amount of $17\frac{1}{100}$ acres, with survey No. 2499, of a location made on the 29th May, 1818, by John McKnight
17 and Thomas Brady, as the legal representatives of Martin Coontz, of certificate No. 145, issued on the 18th September, 1816, by Frederick Bates, recorder of land titles in the Territory of Missouri, to Martin Coontz, or his legal representatives, for 640 acres of land, in conformity with the provisions of the act of 17th February, 1815, for the relief of the inhabitants of the county of New Madrid, who suffered by earthquakes. Survey No. 2499 was executed by Joseph C. Brown, in July, 1818, under contract with the surveyor general of 31st March, 1817. It is recorded on pages 101 and 102 of book "A" in this office; and it appears that a transcript thereof was returned to the recorder of land titles on the 5th November, 1822, by the surveyor general, and that a patent certificate, numbered 309, was issued on it by the recorder, on the 17th November, 1822. 3d. To the extent of $5\frac{69}{100}$ acres, with section No. 16, in township 45 north, range 7 east, of the 5th principal meridian, which is claimed by the schools.

(Signed) M. LEWIS CLARK,
Surveyor General.

A copy of the foregoing record of survey No. 1276 (including the statement of interferences) was transmitted to Adolphe Renard, U. S. recorder of land titles, on the 5th May, 1851.

OFFICE OF THE SURVEYOR GENERAL FOR ILLINOIS AND MISSOURI, *Saint Louis, September 3d*, 1851.

I hereby certify that the foregoing plat and description of survey No. 1276, in the name of the "legal representatives" of
18 Auguste Condé, and also the "statement of interferences," are correctly copied from pages 291 and 292 of book E of records, on file in this office.

M. LEWIS CLARK,
Surveyor General.

Also the act of Congress entitled "An act respecting claims to land in the Territories of Orleans and Louisiana," approved the 3d of March, 1807.

Testimony of Lebeau.

John R. Le Beau, a witness on the part of the plaintiff, testified that he was born in St. Louis in 1803, and has lived here ever since, excepting only eight years, when he was absent up the Mississippi river. He knew Louis Lemonde well; he was an inhabitant of the town of St. Louis; he died more than ten years ago, at a very advanced age; he had four children, two boys and two girls; the oldest was John, the next was Baptiste; the oldest daughter was Ann, who

married Petite Fontaine, who died prior to the year 1850; Ann is still living; the other daughter was Angelique, who married Abraham Raymond; she and her said husband are both living in the city of St. Louis; John, the oldest son, died before his father, without issue.

Plaintiff then offered in evidence the following deed from Abraham Raymond and Angelique, his wife, Ann Fontaine and Baptiste Lemond, to himself, dated the 2d day of March, A. D. 1850:

Deed of Raymond et al. to Hogan.

This deed, made and entered into on this second day of March, eighteen hundred and fifty, between Abraham Raymond and Angelique, his wife, formerly Angelique Lemonde, Ann Fontaine,
19 formerly Ann Lemonde, Baptiste Lamonde, (the said Angelique Raymond, Ann Fontaine, and Baptiste Lamonde are children and heirs-at-law of Louis Lamonde,) parties of the first part, and John Hogan, party of the second part, all of the city and county of St. Louis, in the State of Missouri, witnesseth, that the said parties of the first part, for and in consideration of the sum of eighty dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do, by these presents, transfer, convey, remise, release, and forever quitclaim unto the said party of the second part, all the right, title, interest, and estate which we, or any or either of us, have or may have to a certain tract of land which the said Louis Lamonde, now deceased, but formerly a resident of said city and county and State, acquired, or claimed to have acquired, of August Conde, formerly of St. Louis, now deceased, and which land was supposed to have been situated in the Grande Prairie, said county and State, but for which land the said parties of the first part have never seen any deed from said August Condé to said Louis Lamonde: to have and to hold the said premises unto the said party of the second part, his heirs and assigns forever; and the said parties of the first part covenant and agree, to and with the said party of the second part, that they, their executors and administrators, will warrant and defend the title to the said premises, to said party of the second part, his heirs
20 and assigns, against the claims of all persons claiming the same from, by, or through or under them, the said parties of the first part, but none others.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals, on the day and year first herein written.

A. RAYMOND. [L. S.]

her
ANGELIQUE + RAYMOND. [L. S.]
mark.

her
ANN + FONTAINE. [L. S.]
mark.

his
BAPTISTE + LAMOND. [L. S.]
mark.

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered, that on this 2d day of March, A. D. 1850, before me, the undersigned, clerk of the St. Louis county court, came Ann Fontaine and Abraham Raymond, and Angelique Raymond, his wife, who are personally known to me to be the same persons whose names are subscribed to the preceding instrument in writing as parties thereto, and severally acknowledged the same to be their act and deed for the purposes therein mentioned; she, the said Angelique, being first made acquainted with the contents of said conveyance, acknowledged on an examination, apart from her husband, that she executed the same freely, and without compulsion or undue influence of her said husband.

In testimony whereof, I hereto set my hand and affix the seal of said court at office, in St. Louis, the date last aforesaid.
[L. S.]

LOUIS F. LACY, *Clerk.*

STATE OF MISSOURI,
County of St. Louis, ss:

21 Be it remembered, that on this seventh day of March, A. D. 1850, before me, the undersigned, recorder for said county, came Baptist Lamond, who is personally known to me to be the same person whose name is subscribed to the foregoing deed as a party thereto, and he acknowledged the same to be his act and deed for the purposes therein expressed.

Witness my hand and seal of office, the date aforesaid.
[L. S.]

S. D. BARLOW, *Recorder.*

COUNTY OF ST. LOUIS, *ss:*

I, Stephen D. Barlow, recorder for said county, certify that the foregoing deed was filed in my office March 7th, 1850, and is truly recorded in book K, No. 5, page 123, and fol.

Witness my hand and official seal the date last aforesaid.
[L. S.]

S. D. BARLOW, *Recorder.*

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered, that on this 25th day of January, 1854, before the undersigned, clerk of St. Louis county, came Abraham Reymond, and Angelique Reymond, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they acknowledge the same to be their act and deed for the purposes therein mentioned. She, the said Angelique, being by me first made acquainted with the contents of said conveyance, acknowledged, on an examination apart from her husband, that she executed the same freely and
22 without compulsion or undue influence of her said husband.

In witness whereof, I hereto set my hand and affix the seal of said court, at office in St. Louis, the date last aforesaid.

[L. S.]

JOSIAH THORNBURGH, *Clerk.*

STATE OF MO., *St. Louis, Co.:*

I, the undersigned, recorder for said co., certify that the foregoing deed was filed for record in my office, Jan'y 26, '54, and is truly recorded in book W, 6, p. 455.

Witness my hand and official seal the date aforesaid.

[L. S.]

C. KEEMLE, *Recorder.*

The defendant objected to the admission of this deed in evidence, on account of the vagueness and uncertainty of the description of the property which it purports to convey: but the court overruled the objection and admitted the deed in evidence, and the defendant excepted.

Plaintiff proved, by archive No. 1410, that August Condé was dead on the 13th of January, 1778.

Deposition of Bacanne.

Plaintiff next read in evidence the deposition of Madame Pelipe, or Marian Bacanne, as follows:

I was born in St. Louis; have always lived there, and am now eighty-seven years old. I know Louis Lemonde as well as any one in town. I knew him as far back as I can remember. He is dead. I knew him until he died. He was an old man when I first knew him. I knew the Grand Prairie common fields. I knew that Louis Lemonde cultivated some land in the neighborhood of St. Louis. It was on the road on the left-hand side. Dumonde's land
23 and Lemonde's adjoined. I always understood that it was Lemonde's land. Lemonde's land was south of Dumonde's. Dumond was my husband. I have seen Lemonde cultivating his land. I never observed any one else cultivating it with him. I never took notice of it. He had a wife with him; as for the children I don't know whether they were theirs or not. I have seen his wife working on the land. He raised what the other people did, corn, &c. I knew where the Grand Prairie was. I do not know whether there was a spring on his land. There was one close by, and it was called Lemonde's spring. I don't know how much land Lemonde had. I remember the change of government. Lemonde cultivated there before the change of government. I do not know whether he cultivated until the change of government. I know where Mr. Hogan and Mrs. Garnier live. It is a long ways from where Mrs. Garnier lives to Lemonde's land, for Mrs. Garnier lives in the city, and that land was in the Grande Prairie. Mr. Hogan lives near the place where they used to plough. I mean Lemonde.

Plaintiff here rested his examination of the deponent.

Cross-examination on the part of the defendants by W. L. Williams and J. R. Shepley.

I don't know when Lemond died. He died after the change of government, I think. I don't know how long it was before the change of government that I saw him cultivating there. You can see from my age now, how old I was then. I knew Dodier who culti
24 vated there, and some of the Bequettes. They all cultivated in the same neighborhood—all in the Grand prairie. Bequette and Dodier were next to Lemonde. I remember no others that cultivated there. I did not know the widow Hebert. I knew Dodier's mother very well. I know all of the Dodiers. I know nothing of the St. Charles road of that time. I referred to the road going westward—it went through the prairie. I don't remember its name; don't know how far it went. It was the road to the Grand prairie. It passed between Lemonde's land and Dumond's. I don't remember its width. It was a little bigger than a cart. There was a gate at this end. It was at this end of the Grand prairie. There was a fence with rails. I don't remember which way it ran. I don't remember whose land was nearest to the gate. There were sixty or eighty inhabitants out there. I don't remember who was north of Dumond nor south of Lemonde. I don't remember when I was married to Dumond, nor how old I was. I don't know how long after our marriag it was that he cultivated there. I never took notice. Dumond die after the change of government, I think. I remember when everybody ceased cultivating the Grand prairie. I don't remember whether Lemonde quit then or before. I think that Dumond quit when the others did. I cannot say whether Lemonde quit at the same time my husband did or not. I cannot remember how
25 long I had been married to Dumond when he quit. Lemonde lived up town. I knew a man named Condé; whether it was August or not I don't know. This Condé married the mother of Madame Sanguinette and Madame Lee. I think that Condé was alive at the time the Lemonde and Dumond were cultivating there. Dodier and his mother were alive at that time. I do not know where the present St. Charles road is. I knew then where the Grand Marais was. The Grand Marais was to the left of this land, and further west. I was at Mr. Hogan's yesterday. He carried me there. I had not been that far for four years, when I was living on my farm. If you were to take me out on that road again I could point out a good many places where Dumond used to cultivate. I going out to my place, Dumond's land was on the left hand. I don' know the Manchester road. I know Market street; the road I we was somewhere about there. I have known Mrs. Garnier well fro her youth. Dumond's land was on the left hand of the road goi out to my place.

And further this deponent saith not.

her
MARIAN + BACCANE.
mark.

It was agreed between the parties, that the premises in the possession of the defendant at the commencement of this suit, being the same described in plaintiff's petition, were then and still are worth more than two thousand dollars.

The foregoing being all the evidence in the case, the
26 plaintiff prayed the court to give the following three instructions to the jury, as the law governing the case, to wit:

Plaintiff's instructions refused.

HOGAN *vs.* PAGE. } Land court, Oct. T., 1858.

1. If the jury find, from the evidence, that at the time the claim mentioned in the confirmation papers given in evidence by the plaintiff was presented to the board of commissioners for confirmation, Auguste Condé was dead, and that the same was presented by Louis Lemonde in his own right as the assignee of said Cond , and that the certificate of confirmation was accordingly delivered to said Lemonde as such assignee and claimant, as aforesaid, by the recorder of land titles, then the confirmation of said claim inures to said Lemonde.

Refused.

2. If the jury find, from the evidence, that for ten consecutive years prior to the 20th day of December, A. D. 1803, Louis Lemonde had been in possession of the tract of land of which the premises sued for are a part, and that said tract was not claimed by any other person, and did not exceed two thousand acres; that said Lemonde, on that day, was resident in the Territory of Louisiana, and had still possession of such tract of land; that the claim to said tract was presented by said Lemonde to the board of commissioners for confirmation, and that August Condé was, at that time, dead; that said claim was presented to the board by said Lemonde in his own right as assignee of said Condé, and that the certificate of
27 confirmation of said claim was delivered to said Lemonde as such assignee and claimant as aforesaid, by the recorder of land titles, then the confirmation of said claim inures to said Lemonde.

Refused.

3. If the jury find from the evidence that the premises in question in possession of the defendant at the commencement of this suit are a part of a tract of land which was cultivated by Louis Lemonde prior to the 20th day of December, 1803; that said Louis Lemonde was, at the time of such cultivation, an inhabitant of the town of St. Louis; that said tract of land was situated in the Grand prairie, in the neighborhood of said town, and was used by said Lemonde for the purposes of cultivation, and was one of a series of lots of similar form and char-

acter, also used by the inhabitants of said town for the purposes of cultivation, and lying adjoining each other in the same general range of lots, then the claim of said Lemonde to said tract of land was confirmed to him by the act of Congress approved 13th June, 1812.

But the court refused to give said instructions and each of them, and the plaintiff thereupon duly excepted to such action and refusal. The defendant asked the court to give the jury the following instruction:

Defendant's instruction given.

The jury are instructed that upon the case, as made by the plaintiff, he is not entitled to recover in this action.

To the giving this instruction the plaintiff objected; but the
28 court overruled his objections and gave the instruction; to all of which the plaintiff duly excepted.

Verdict.

And thereupon the jury found the following verdict for the defendant:

JOHN HOGAN
vs.
DANIEL D. PAGE.

We, the jury, find for the defendant.

ALEX. JOHNSON, *Foreman.*

Motion for new trial.

And the plaintiff immediately filed his motion and reasons for setting aside said verdict and for a new trial, as follows:

St. Louis land court—October term, A. D. 1858.

JOHN HOGAN
vs.
DANIEL D. PAGE. *88;*

And now comes said plaintiff and moves the court to set aside the verdict of the jury in this case, and to grant him a new trial thereof, for the following reasons:

1. The court gave instructions to the jury on the prayer of the defendant, which were illegal and against law, and ought to have been refused.

2. Said court refused to give to the jury instructions prayed by the plaintiff, which were legal and ought to have been given to the jury.

3. Said verdict is against law and evidence and the weight of evidence.

T. POLK,
Att'y for Plaintiff.

But the court overruled said motion, and the plaintiff duly excepted. And now said plaintiff presents this bill of exceptions to the

court in due time, and prays the judge to sign and seal the
29 same, and make it a part of the record in this cause; which is accordingly done.

C. B. LORD. [L. S.]

STATE OF MISSOURI,
County of St. Louis, ss:

I, Charles A. Mantz, clerk of the St. Louis land court, within and for said county, certify the foregoing transcript to be a true and correct copy of the record and proceedings had (as required) in the case of John Hogan, plaintiff, and Daniel D. Page, defendant, as fully as the same remains of record in my office.

In testimony whereof, I hereto set my hand and affix the seal of said court, at office in the city of St. Louis, this 8th day of
[L. S.] March, A. D. 1859.

CHARLES A. MANTZ, *Clerk.*

Assignment of errors.

And on the twentieth day of March, A. D. 1860, there was filed in the office of the clerk of the supreme court of the State of Missouri an assignment of errors, which is in the words and figures following, to wit:

And now comes the plaintiff in error and files the following assignment of errors, and says that there are errors in the record and proceedings in this cause as follows, to wit:

1st. The court below excluded evidence from the jury that had been offered by the pl'ff in error, and which was legal and competent.

2d. Said court refused to give the jury instructions prayed
30 by the pl'ff in error which was legal, and competent, and appropriate in the cause, and which ought to have been given.

3d. Said court gave the jury instructions prayed by the def't in error which were illegal, and ought to have been refused.

4th. Said court refused to grant the motion of pl'ff in error in this cause for a new trial thereof, which ought to have been allowed.

5th. Said court rendered judgment in this cause in favor of def't in error, when, by the laws of the land, it ought to have been rendered in favor of the pl'ff in error.

T. POLK,
For Hogan.

Submission.

And afterwards the said cause was continued from term to term until March term, A. D. 1862.

And at said March term, A. D. 1862, the following further proceedings were had herein, to wit:

MONDAY, *April 28th*, 1862.

Now, at this day come the parties, by their respective attorneys, and submit this cause to the court upon the briefs filed herein.

Judgment.

Error to St. Louis land court.

WEDNESDAY, *May* 14*th*, 1862.

JOHN HOGAN, plaintiff in error,
vs.
DANIEL D. PAGE, defendant in error.

Now again come the parties aforesaid, by their respective attorneys, and the court now being sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment
31 rendered herein by the said St. Louis land court be in all things affirmed, and stand in full force and effect, and that the said defendant in error recover of the aforesaid plaintiff in error his costs and charges herein expended, and have execution therefor. Opinion filed.

Opinion of the court.

Which opinion is in the words and figures following, to wit:

This case was in this court once before, and the decision in it is reported in 22d Mo. Rep., 55. Having been remanded to the St. Louis land court, it was there tried again, and judgment given for the defendant, and to reverse that judgment the plaintiff has brought the case again to this court by writ of error.

At the trial below the plaintiff gave in evidence the same confirmation to the representatives of Auguste Condé, which was considered by this court when the case was here before, and claimed, as heretofore, that that confirmation inured to Louis Lemonde, under whom he claims.

He also gave some evidence of possession of the premises by Louis Lemonde prior to the 20th day of December, 1803, and claimed thereby a confirmation by virtue of the act of Congress of 13th June, 1812.

The land court instructed the jury that, "upon the case as made by the plaintiff, he is not entitled to recover."

32 To entitle the plaintiff to recover he must show title in himself, and until he has made a prima facie case the defendant is not bound to show any color of right to the possession.

1st. This court, when the case was here before, fully and clearly decided that the confirmation to Condé's representatives did not inure to Lemonde. The plaintiff claiming only under Lemonde, has therefore shown no title in himself under that confirmation.

2d. The confirmation, so given in evidence by the plaintiff to the representatives of Condé, is a superior title to a confirmation to Lemonde by the act of 1812. The plaintiff has thus himself shown that he has no title by confirmation under the act of 1812. Therefore the court properly instructed the jury that he was not entitled to recover. Judgment affirmed. Judges Bay and Dryden concur.

BARTON BATES.

Bond on writ of error to U. S. Supreme Court.—Filed Dec. 5, 1862.

Afterwards the plaintiff in error filed the following bond, to wit: Know all men by these presents, that we, John Hogan and John Kennard and John W. Burd, are held and firmly bound unto Daniel D. Page in the full and just sum of two hundred dollars, to be paid to the said Daniel D. Page, his heirs, executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this fifth day of December, in the year of our Lord one thousand eight hundred
33 and sixty-two. Whereas lately, at the March term, 1862, of the supreme court of the State of Missouri, in a suit depending in said court between John Hogan, appellant, and Daniel D. Page, appellee, judgment was rendered against the said John Hogan, and the said John Hogan having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Daniel D. Page, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next: Now the condition of the above obligation is such, that if the said John Hogan shall prosecute said writ to effect, and answer all damages and costs if he fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

JOHN HOGAN. [L. S.]
JOHN KENNARD. [L. S.]
JNO. W. BURD. [L. S.]

Sealed and delivered in the presence of—
BARTON BATES.

Approved by Barton Bates, presiding judge of the supreme court.

STATE OF MISSOURI, *ss:*

I, Andrew W. Mead, clerk of the supreme court of the State of Missouri, held at St. Louis, certify that the foregoing is a full, true, and complete transcript of the record and proceedings in the case of John Hogan, plaintiff in error, *vs.* Daniel D. Page, defendant in error, as fully as the same remain of record and on file in my office.

In testimony whereof, I hereto set my hand and affix the seal of said court, at office, in the city of St. Louis, this 15th Jan-
[SEAL.] uary, 1863.

A. W. MEAD, *Clerk.*

Filed February 4, 1863.

1335

Supreme Court of the United States,

OCTOBER TERM, 1864.

JOHN HOGAN, *Plaintiff in Error*,
vs.
DANIEL D. PAGE, *Defendant in Error.*

Writ of Error to the Supreme Court of Missouri.

BRIEF FOR PLAINTIFF IN ERROR, by Britton A. Hill.

STATEMENT OF CASE.

Hogan sued Page in the St. Louis Land Court, in ejectment, for nineteen ninety-sixth parts of a common field lot of one by forty arpens, in the St. Louis Grand Prairie—a common field belonging to St. Louis in Spanish times.

The plaintiff gave in evidence the following chain of title:

To Frederick Bates, Esq., Recorder of Land Titles for the Territory of St. Louis—Sir: Take notice, that I claim a tract of land situate in Big Prairie, district of St. Louis, formerly the property of Mr. Condé, containing one arpent by forty arpens, as appears by the concession remaining in your office, Book No. 1, page 31.

St. Louis, 23d May, 1808. LOUIS LEMONDE, × *his mark.*

(See Book D, page 165.) Witness—M. P. LEDUC.

(*Cert.* 1276.)

Wednesday, November 13, 1811.

Board met. Present—John B. C. Lucas, Clement B. Penrose, and Frederick Bates, Commissioners.

Louis Lemonde, assignee of Auguste Condé, claiming one by forty arpens of land situate in Big Prairie, district of St. Louis, produces a concession from St. Ange and Labuxiere, Lt. Gov., dated 10th January, 1770. The Board grant to the representatives of Auguste Condé forty arpens of land under the provisions of the 2d section of the Act of

Congress entitled "An Act respecting claims to land," and passed 3d March, 1807, and order that the same be surveyed conformably to possession (survey at the expense of the United States), as ascertained by report of survey dated as above, 10th January, 1770.

Board adjourned till to-morrow, nine o'clock A. M.

JOHN B. C. LUCAS,
FREDERICK BATES,
CLEMENT B. PENROSE.

(See Minutes of the Board, Book No. 5, pages 398, 399 and 407.

Translation of grant to Condé preceding the foregoing:

(*Condé.*) The 10th of January, 1770. Upon the demand of Mr. Auguste Condé, surgeon in St. Louis, we have conceded and we do concede to him. his heirs and assigns, in fee simple, a tract of land situated in the Grand Prairie of the said village of St. Louis, containing two arpens in width by forty arpens in depth, bounded on the one side by the land of Mr. Hervieux and on the other side by the land of Louis Dehëtres, in order that himself, the said Condé, and his representatives, may enjoy the same in full property, under the conditions to settle the said land within one year and a day; and that the same is to remain liable to the public and other charges which his majesty may be pleased to impose thereon.

Given in St. Louis, the said day, and we have signed.

LABUXIERE.

The following is a copy of the receipt on file in the office of the Recorder of Land Titles for the confirmation of certificate No. 1276:

Received, St. Louis, January 27, 1825, of the Recorder of Land Titles, the Commissioners' certificate of confirmation No. 1276, relating to a field lot in the Big Prairie, St. Louis county.

LOUIS LEMONDE, × *his mark.*
Test—M. P. LEDUC.

Plaintiff next gave in evidence the U. S. survey No. 1276, from the office of the Surveyor General of Illinois and Missouri, approved May 5th, 1851.

As there was no question of boundary or location in the case, it is unnecessary to set out this survey.

Plaintiff proved that Angelique Raymond, Ann Fontaine and Baptiste Lemonde were the only surviving heirs of Louis Lemonde, and read in evidence a deed from them to himself, dated the 2d of March, 1850, the description in which is as follows: "All the right, title, interest and estate which we or any or either of us have or may have to a certain tract of land which the said Louis Lemonde, now deceased, but formerly a resident of said city and county and State, acquired or claimed to have acquired of Auguste Condé, formerly of St. Louis, now deceased, and which land was supposed to have been situated in the Grand Prairie, in said county and State, but for which land said parties of the first part have never seen any deed from said Auguste Condé to said Louis Lemonde."

1337

Plaintiff then read in evidence the deposition of Madame Marian Beccanné to prove the cultivation and possession by Louis Lemonde of the common field lot of one by forty arpens, of which the *locus in quo* was a part prior to the 20th December, 1803. He also proved that Auguste Condé was dead on the 13th January, 1778. (Rec., p. 15.)

The defendant offered no evidence of any kind.

This being all the evidence in the cause, the plaintiff prayed the court to give the jury the following instructions :

1. If the jury find from the evidence that, at the time the claim mentioned in the confirmation papers given in evidence by the plaintiff was presented to the Board of Commissioners for confirmation, Auguste Condé was dead, and that the same was presented by Louis Lemonde in his own right as the assignee of said Condé, and that the certificate of confirmation was accordingly delivered to said Lemonde, as such assignee and claimant as aforesaid, by the Recorder of Land Titles, then the confirmation of said claim enures to said Lemonde.

2. If the jury find from the evidence that, for ten consecutive years prior to the 20th day of December, A. D. 1803, Louis Lemonde had been in possession of the tract of land of which the premises sued for are a part, and that said tract was not claimed by any other person, and did not exceed two thousand acres; that said Lemonde on that day was resident in the Territory of Louisiana, and had still possession of such tract of land ; that the claim to said tract of land was presented by said Lemonde to the Board of Commissioners for confirmation, and that Auguste Condé was at that time dead ; that said claim was presented to the Board by said Lemonde in his own right as assignee of said Condé, and that the certificate of confirmation of said claim was delivered to said Lemonde, as such assignee and claimant as aforesaid, by the Recorder of Land Titles—then the confirmation of said claim enures to said Lemonde.

3. If the jury find from the evidence that the premises in possession of the defendant at the commencement of this suit are a part of a tract of land which was cultivated by Louis Lemonde prior to the 20th day of December, 1803 ; that said Lemonde was at the time of such cultivation an inhabitant of the town of St. Louis ; that said tract of land was situated in the Grand Prairie, in the neighborhood of said town, and was used by said Lemonde for the purposes of cultivation, and was one of a series of lots of similar form and character also used by the inhabitants of said town for the purposes of cultivation, and lying adjoining each other in the same general range of lots,—then the claim of said Lemonde to said tract of land was confirmed to him by the Act of Congress approved the 12th of June, 1812.

But the court refused to give these instructions, and the plaintiff duly excepted.

On motion of the defendant Page, the court gave the following instruction to the jury:

"The jury are instructed, that, upon the case as made by the plaintiff he is not entitled to recover."

Which instruction the court gave, and the plaintiff excepted.

The jury having found a verdict for the defendant, the plaintiff immediately filed his motion for a new trial, for the reasons—1. That the court gave the jury illegal instructions at the prayer of the defendant; 2. That it refused to give the instructions prayed by plaintiff; and 3. That the verdict was against law and evidence, and the weight of evidence. But the court overruled the motion, and the plaintiff excepted.

The Supreme Court of Missouri decided, after stating the facts, as follows:

"I. This court, when the case was here before, fully and clearly de-
"cided that the confirmation to Condé's representatives did not enure
"to Lemonde. The plaintiff claiming only under Lemonde, has there-
"fore shown no title in himself under that confirmation."

"II. The confirmation so given in evidence by the plaintiff to the re-
"presentatives of Condé, is a superior title to a confirmation to Lemonde
"by the Act of 1812. The plaintiff has thus himself shown, that he
"has no title by confirmation, under the Act of 1812."

"Therefore the court properly instructed the jury that he was not en-
"titled to recover. Judgment affirmed."

To this decision against the title set up by the plaintiff, under the Acts of Congress of 3d March, 1807, and of 13th of June, 1812, the plaintiff sued out a writ of error to this court.

BRIEF.

1st.—The confirmation was made under the 2d and 4th sections of the Act of 3d of March, 1807, and the 4th section of the Act of 2d of March, 1805, to which the said Act of 1807 was supplementary.

The confirmation was to the *claimant*, Louis Lemonde, by force of the said sections of said Acts of Congress. (See vol. 2, p. 326–7, and 440–1, Little & Brown's ed. of Stat. at Large; and vol. 1, Pub. Lands, Laws, &c., p. 122–3, and 153–4.)

By the 2d section of said Act of 1807, vol. 2, Stat. at Large, 440, it is enacted: "that any person or persons who, on the 20th day of De-
"cember, 1803, *had, for ten consecutive years prior to that day, been in*
"*possession of a tract of land* not claimed by any other person, and
"not exceeding 2,000 acres, *and who were on that day resident in the*
"*Territory of Orleans or Louisiana, and had still possession of said*
"*tract of land,* shall be confirmed in their titles to said tract of land.
"Provided, &c. * * *"

By the 4th section of said Act of 1807, power is granted to the Board of Commissioners to confirm "where the claim is made by any person "or persons *who were on the 20th of December*, 1803, *inhabitants of* "*Louisiana, &c.* * * *"

The Board of Commissioners in Missouri possessed only such powers as were conferred upon it by the Acts of Congress of the 2d of March, 1805, 25th of February, 1806, and 3d of March, 1807. The first of these Acts created the Board, prescribed its duties and jurisdiction, and the others extended that jurisdiction to certain classes of cases that might be filed during the time as extended; and the Act of 1807 provided for a confirmation to a *claimant* upon a *consecutive possession of ten years*, without any grant, order of survey, or permit to settle, or plat of survey.

By the 4th section of the Act of 1805, 2 vol., L. & B. ed. 326–7, it is enacted among other things, that each claimant "shall, before the "first day of March, 1806, deliver to the Register, or Recorder of land "titles, within whose district the land may be, a notice in writing, "stating the nature and extent of his claim, together with a plat of "the tract claimed; and shall deliver to the Register, or Recorder, for "the purpose of having the same recorded, every grant, order of sur-"vey, deed of conveyance, or other written evidence of his claim, &c.," all of which were required to be recorded; and if any person failed to file his claim, all his rights should be void and barred forever.

After the claim was filed and recorded, the Board was authorized to act. The filing of the claim was the only act which could confer jurisdiction upon the Board.

Section 1 of Act of 1805, vol. 2, p. 325, requires possession under a registered warrant, or order of survey, on the 1st of October, 1800, and actual inhabitation and cultivation.

Section 2 of same Act extends the provisions of that Act to all persons actually in possession of land, under any settlement right, on the 20th of December, 1803.

Under the Act of 1805, no confirmation could be made to a claimant upon a mere possession for ten consecutive years, without any grant, order of survey, or permit to settle.

Section 2 of the Act of 1807, vol. 2, p. 440, gave this right to the Board for the first time. It is a full power to confirm, to a claimant before the Board, any tract of land not exceeding 2,000 acres, upon proof of ten years' possession on and before the 20th day of December, 1803.

Section 5 of said Act of 1807 limits the jurisdiction of the Board expressly to persons who shall deliver *notices in writing*, and written evidences of claims to land, on or before the first day of July, 1808, "and persons delivering such notices and evidences shall be entitled to the same benefit as if the same had been delivered within the time limited by the former Acts; *but the rights of such persons as shall ne-*

glect so doing, within the time limited by this Act, shall so far as they are derived from, or founded on any Act of Congress, *ever after be barred and become void, and the evidences of their claims never after admitted as evidence in any court* of law or equity whatever."

The power of the Board, by force of these Acts of Congress, is limited to the confirmation of claims duly filed and recorded. The Board could only confirm the claim of a claimant, and all other confirmations under these Acts of Congress are void.

The Federal Statute declares in emphatic terms that the confirmation shall be to the claimant before the Board, and that all persons who do not file a claim with the Recorder shall be forever barred.

2d.—The Supreme Court of Missouri has erred in holding that the confirmation, under the 2d section of said Act of 1807, is a confirmation to Condé and his heirs at law, so as to vest a superior title to a confirmation by the Act of 13th of June, 1812, to Louis Lemonde and his heirs at law.

Condé had died 33 years before this Act of confirmation, and his heirs at law had not filed any claim to authorize a confirmation to them; and all claim they might have had, if any, as Condé's heirs at law, was expressly barred by section 5 of said Act of Congress of 1807.

In the case of *Strother vs. Lucas*, 6 Peters, 771–2, it was held, that notice of the nature and extent of the claim must be filed, together with all written evidence of claim, *and all persons neglecting to do so are forever barred.* See, also, *Strother vs. Lucas*, 12 Peters, 453, 4, 8. *Landes vs. Perkins*, 12 Missouri Rep., 255–6.

If, then, the confirmation be held to be a confirmation to the heirs at law of Condé, it is void, and conveys no title to them, under the Acts of Congress and the decisions of this Court.

By the act of 13th June, 1812, this common field lot was granted directly to Louis Lemonde and his heirs at law, without any condition of survey. So it was held in the case of *Glasgow & Taylor vs. Hortez*, 1 Black, 595, and in *Guitard vs. Stoddard*, 16 Howard, 494. This has been the settled law in Missouri for forty years.

The evidence in the record (p. 15, 16) conclusively shows that Lemonde cultivated the field lot before 1803, and this operates as a complete grant to him and his heirs at law on the 13th of June, 1812. (See cases cited.)

3d.—The Supreme Court of Missouri erred inholding that the confirmation under the act of 1807 was not to Louis Lemonde, the claimant.

This Federal statute expressly confirms the land to the claimant Louis Lemonde, according to the 2d section of said act of 1807, by the provisions whereof Lemonde must have been "in possession of the land for ten consecutive years prior to the 20th day of December, 1803, and a resident of the Territory, and in possession of the same land, on the

said day." Condé, who died 25 years before that day, could not, under the statute, be the confirmee, and there is no evidence that his heirs at law were ever in the possession of this field lot, or inhabitants of the Territory, in 1803. In direct conflict with any such pretence, the confirmation judgment conclusively shows that the claimant Lemonde was the person in possession of the south half of the lot for ten consecutive years prior to the 20th day of December, 1803.

The record (p. 9) shows that Louis Lemonde, the claimant, received of the Recorder of land titles, on the 27th of January, 1825, the Commissioners' certificate of confirmation No. 1276; being the one in question.

John Hogan, the plaintiff, took possession of this field lot under a deed from the heirs at law of Louis Lemonde; and at no period since 1778, have the heirs at law of Condé ever made any claim for this field lot or any part thereof.

On the 5th of May, 1851, this lot was surveyed by the United States, as "the southwesterly half of the lot of *two* by forty arpens, which "was granted to Auguste Condé on the 10th of January, 1770, * * * "and having been *claimed* before Frederick Bates, U. S. Recorder of "land titles, *by Louis Lemonde*, as per notice, on the 23d May, 1808, "to the extent of *one* by forty arpens, 'formerly the property of Mr. "Condé,' &c. * * " (Rec. p. 10.)

The defendant Page is a mere naked trespasser upon this common field lot, without any title or claim of title.

4th.—Plaintiff in error says, the confirmation under the 2d and 5th sections of the Act of 1807 is to *Louis Lemonde, the claimant*, and no other person can set up any title under the confirmation. The decisions of the Supreme Court of Missouri, and of this Court, have been uniform to this effect for a great number of years, until the ruling of the Supreme Court of Missouri in this case has changed that long established law of property, upon which the titles to large and valuable estates in St. Louis have rested for their security for half a century.

In *Strother vs. Lucas*, 6 Peters, 771–2, decided in the year 1832, and in the same case, decided in 1836, it was held that the confirmation was to the *claimant* before the Board of Commissioners.

In *Landes vs. Perkins*, 12 Mo., 255, decided in 1848, the Supreme Court of Missouri, following these decisions of this Court, decided that: "Nothing is to be found in the Acts of 1805 or 1807 which warrants the opinion that the *confirmation passed the legal title of the estate confirmed to any other person than the claimant.* The Act of 1807 speaks of the claimant or his legal representatives; but, clearly, it contemplates only those representatives who *file their claims before the Board* as assignees under the original claimant from the Spanish government. If one is a representative, and he does not prefer his claim as such for confirmation, he is not regarded by the Act." * * * *

"The 4th section of the Act of 1805 prescribes, that every person claiming lands *shall file his claim.*" "The 6th section of the Act of 1807 directs that reports of the final decisions in favor of claimants be made to the Secretary of the Treasury, and that a certificate shall be issued to the *claimant,* showing that he is entitled to a patent; thus clearly evincing that, in the contemplation of Congress, the *legal title* could only pass to the *claimant.*" * * * pp. 256. "The Commissioners had no authority, under the laws which controlled their action, to pass the fee of the government to any other person than the *claimant* on the record before them. Had they expressly confirmed the claim to any one except the claimant, their act would have been void." * * * "The law declared that the action of the Board should be final, as between the United States and the *claimant.* The United States and Clamorgan were the only parties to the proceeding before the Board, and the Board declare that as between them the title is in Clamorgan." "Under the Act of 1807 the decision of the Commissioners had the same effect as an act of Congress would have had on claims reported under the Act of 1805. Now, will any one contend that the Act of confirmation passed by Congress conveyed the legal title of the lands confirmed to any others than those in whose names the claims were reported?" The case of Strother vs. Lucas, 6 and 12 Peters, is one involving the construction of the Acts under which this confirmation was made. It is conceded that that case is different from this, but it affords no ground for the opinion that a confirmation under a law is as fully, and to all intents and purposes, a grant, as if it contained in terms a grant *de novo;* and that it is inconsistent with all the Acts of Congress which have organized Boards, that the confirmations of the Commissioners should enure to any other uses, or to any *other person* than the person or persons claiming the confirmation."

In 1850, on the argument of the great case of *Bissell vs. Penrose,* reported 8 How., 338, an attempt was made by the counsel for Bissell to question the authority of the case of *Strother vs. Lucas,* 6th and 12th Peters; but this court, after the most thorough investigation, decided "that on each occasion, when it (the case of Strother vs. Lucas) was before the Supreme Court it was held that the confirmation was to be deemed to be in favor of the person claiming it."

This decision is conclusive in favor of Lemonde. He was the person who filed the claim, the claimant before the Board, the one who filed his receipt for the confirmation certificate, and whose heirs sold the land to the plaintiff.

5th.—In the same case of *Bissell vs. Penrose,* 8 How., 338, this court has decided what acts constitute a person a claimant under said act of Congress.

The confirmation in that case was as follows:

"The sons of Benito Vasquez, each claiming 800 arpens of land under

1343

concession, &c., the Board are unanimously of the opinion that this claim ought to be confirmed to the said Benito, Antoine, Hypolite, Joseph and Pierre Vasquez, or their legal representatives, according to the concession."

Rudolph Tillier filed that claim before the old Board, precisely as Louis Lemonde filed his claim in this case. Tillier's name does not appear in the proceedings of the Board when the confirmation was made; but this court held the confirmation to be to Rudolph Tillier, because he was the *claimant*. 8 How., 338. This court further held that Benito Vasquez "was not a claimant, as that term is regarded as applicable to those ONLY *in whose name the claim was filed* with the Recorder, under the act of 1805."

The case of *Bissell vs. Penrose* is conclusive of this case, and a close examination will prove it.

The concession, dated the 16th February, 1800, was to the five sons of Benito Vasquez—to wit: Benito, Antoine, Hypolite, Joseph, and Pierre—of 800 arpens each, making in all 4,000 arpens. On the 11th February, 1806, Benito, the eldest, assigned his 800 to Rudolph Tillier, who, on the 25th August, 1806, filed his claim before the old Board. On the 22d September, 1810, the Board decided that this claim ought not to be confirmed. On the 3d of October, 1832, the claim was brought before another Board; but before then, and in his lifetime, Tillier had assigned it to C. B. Penrose; and he, as early as the 20th February, 1823, assigned it to the plaintiff.

Upon these facts this court held "that the title was confirmed to Tillier, the assignee, *as claimant*, under the act of 1836."

At the time of that confirmation Tillier was not the *assignee*, for he had sold to Penrose, who sold to the plaintiff, and the confirmation was to Vasquez. If the confirmation had been to the *assignee*, and not to the *claimant*, this court would have held that the title passed to the plaintiff, and not to Tillier, whose name does not appear in the act of confirmation.

See also *Landes vs. Brant*, 10 How., 370, a decision upon the same title involved in the case of *Landes vs. Perkins*, 12 Mo., cited above; in which case this court held that the *claimant* is the proper person to receive the certificate; that Clamorgan, the *claimant*, was the true and proper assignee under Dodier, through the mesne conveyances under which he claimed; and that he had the oldest and best claim to the land as against every other claimant under the Spanish Government. This court, in this case, approved the law as declared in *Bissell vs. Penrose;* that the confirmation was to the *claimant*.

This same question arose before the Supreme Court of Missouri in 1851, in the case of *Boone et al. vs. Moore*, 14 Mo., 420, wherein it was held that the confirmation enured to the person claiming the land before the Board of Commissioners, under the acts of 1805 and 1807.

In that case the Spanish concession was to David Cole; the claim was filed before the Recorder of Land Titles in 1808, by Jesse Richardson, assignee of Mackay, assignee of Cole. The confirmation was in express terms to David Cole, the original grantee, or his legal representatives. The plaintiffs, proceeding on the supposition that the confirmation was in favor of *Cole*, and not of the *claimant*, Jesse Richardson, offered in evidence on the trial copies of the deeds from Cole to Mackay, and from Mackay to Richardson, to show that the inchoate right of Cole in the land had passed by mesne conveyances from him to Richardson, under whom plaintiffs claimed; but the copies of these conveyances were excluded by the court below, and the jury was instructed that the plaintiff was not entitled to recover. The Supreme Court of Missouri (p. 424–5), in deciding this question, held: "If the confirmation was to Richardson, and not to the legal representatives of Cole, the admissibility of these copies was an immaterial question. The court reviewed the law as finally settled by this court, in *Bissell vs. Penrose*, 8 How., and held that the confirmation enured to Richardson, the claimant, and not to Cole, the original grantee from the Spanish authorities, and that evidence of the derivative title from Cole to Richardson was immaterial.

These decisions of the State court and of this court settled the law, as a rule of property in Missouri, in strict accordance with the Acts of Congress of 1805 and 1807, that the legal title from the United States was vested by the confirmation in the *claimant*.

6th.—The original grantee of the Spanish authorities had no title under the incomplete grants of Lieutenant Governors. The beginning of the title in this case is the confirmation to the claimant. The heirs of Condé had no standing in court upon the old concession of 1770. It was a mere inchoate equity, which courts of justice could not recognize.

Strother vs. Lucas, 12 Peters.
Mackay vs. Dillon, 4 Howard.
LeBois vs. Bramell, 4 Howard.

7th.—By the Spanish laws and customs a person could acquire title to land in two ways without any written evidences of title.

I.—By verbal sale. *Gonzales vs. Sanchez*, 4 Martin N. S., 457. *Maes vs. Gillard's heirs*, 7 Martin N. S., 321. *Ducrest's heirs vs. Byeau's est.*, 8 Martin N. S. *Sacket vs. Hooper*, 3 La., 107.

The taking of possession by the vendee of the land sold, is a strong circumstance in proof of such a verbal sale, but not necessary to its validity. *Allen vs. Moss*, 27 Mo., 361.

II.—By prescription of ten years, under a possession begun and continued in good faith, where both parties reside in the same territory. *Strother vs. Lucas*, 12 Peters, 424 and 461. 4 Martin N. S., 223. *Du-*

four vs. Camfranc, 11 Martin, 716. Moreau & Carleton's Partidas, vol. 1, p. 369 to 391.

The possession of Lemonde for ten consecutive years, on and before the 20th of December, 1803, added to the possession proved by Madame Baccanne Dumond (Rec., p. 16), would show a possession in Lemonde for twenty-five years.

Such a possession of a lot in the common field was under the surveillance of the Spanish civil and military authorities, and subject to the orders of the syndics and commandants of the post of St. Louis. *Mackay vs. Dillon*, 4 How.

8th.—Lemonde's notice of claim states that the lot claimed by him before the Board was formerly the property of Mr. Condé, as appears from the concession. But the claim is only for one arpent by forty, while the concession to Mr. Condé is for two arpens by forty.

The U. S. survey 1276, shows that Lemonde's possession was on the south-westerly half of the Condé concession. The Board therefore confirmed the one by forty arpens to Lemonde, upon the ten years' possession, and did not intend to confirm the concession to Condé for two arpens by forty.

The ten years' possession of the one arpent by forty, by Lemonde, authorized the Board to confirm that lot to the claimant upon the proof of his naked possession; and the attempt of the Supreme Court of Missouri to construe this confirmation to be one in favor of Auguste Condé, is in direct conflict with the law and the facts appearing of record. The judgment should therefore be reversed.

BRITTON A. HILL,
Of Counsel for Plaintiff in Error.

1347

Supreme Court of the United States,

HOGAN *vs.* PAGE.

The declaration describes the land in controversy. The plea admits possession. The defendant sets up no title in himself. The case therefore turns wholly on the title of plaintiff.

I.

The plaintiff claims under an inchoate Spanish title confirmed under the 2d section of the act of March 3d, 1807, on the application of Louis Lemond.

His claim was filed May 23d, 1808, (Record, p. 7,) in which he sets up title in himself *as assignee.*

The commissioners, in their report, (p. 8,) represent Louis Lemond "*as assignee*" of Condé, and grant to "*the representatives*" of August Condé the land in controversy *under the provisions of the second section* of the act.

This decision, with many others, was reported to Congress, and the title confirmed by the act of Congress of April 12th, 1814, chapter 52.

The report on which Congress acted is in State Papers, Vol. 2, Public Lands, p. 727.

The tract was surveyed by the United States Surveyor, (p. 10,) survey 1276.

The title of plaintiff is better than a patent in this—

That a tribunal with judicial powers decided it—their finding therefore concludes all matters essential to their

decision—and the title found by them was confirmed by act of Congress. The judgment of the commissioners thus affirmed settles the questions of *possession*, *cultivation*, and *residence*. The confirmation being under the *second section* of the act, these were essential to it. But the question remains: In whose favor was the judgment and confirmation?

It appears, by the record, that Lemond filed, on the 23d of May, 1808, notice of his claim to this tract, which he states was formerly the property of Mr. Condé, (Rec., p. 7.) He says: "*I claim, &c.*"

In the description, by the Board, of the party claiming he is described *as assignee* of August Condé.

The Board adjudge the title to the representatives of Condé.

Now the only "*representative*" of Condé before the Board was Lemond. They must have intended *him* or no one.

They could not have intended the heirs or any other assignee of Lemond, for no one else had *filed his claim*, and all else were forever barred, (Sec. 5, act of 1807,) and their claims could never after be admitted as evidence in any court of law or equity.

The confirmation is to the claimant *who files his claim*. Strother vs. Lucas, 12 Peters, 416 and 458. In that case, the land was confirmed to "*the legal representatives of the original grantees.*" (416)

The court says it is to the person who made and proved his claim before them. (458)

So in Bissel vs. Penrose, 8 How., 338, the court say, the term claimant is applicable to those only in whose name the claim is filed. The confirmation in this case, is to the legal representatives of Benito Vasquez, 8 How., 320. This case is in point.

For further authorities on this point, I refer to the brief of Mr. Hill.

1349

II.

But, if it be conceded that Lemond took nothing under the act of March 3d, 1807, it is quite clear that no one else took anything, and that no one else can set up title or prove a claim under that act, and their claims, if they had any under any law of the United States, can never "*be admitted as evidence in any court of law or equity whatever.*" See the act and cases referred to.

Now the plaintiff in this case sets up title under the 1st section of the act of June 13th, 1812. He proved that Lemond, under whom he claims, cultivated and possessed the land in controversy prior to the 20th day of December, 1803, and claimed that the same was confirmed to him by said act. (Guitard vs. Stoddard, 16th How., p. 494.) The third instructionasked by plaintiff's counsel in the Land Court below, (Record, p. 17,) to this point was refused, and the refusal assigned for error. The Supreme Court of Missouri sustained the charge of the Land Court, and say: "2d. The confirmation so given in evidence by the plaintiff, to the representatives of Condé, is a superior title to a confirmation to Lemond by the act of 1812. The plaintiff has thus shown that he has no title by confirmation under the act of 1812, therefore, the court properly instructed the jury, that he was not entitled to recover." (See Record, p. 20.)

If the court mean, by their finding, to say or imply that Lemond filed the claim in behalf of Condé, they contradict the record, which expressly states Lemond claimed for himself *as assignee*. He, says: "*I claim* a tract of land situate in the Big Prairie, *formerly the property of Mr. Conde*," and the commissioners in their judgment describe him as "*assignee of August Conde.*"

No claim was filed in behalf of any representative of Condé, except Lemond. None else therefore can set up or show title under any act of Congress, therefore the possession of Lemond prior to December 20, 1803,

gives title under the act of June 13, 1812. See to this point Guitard vs. Stoddard, 16 How., opinion of the court, page 507, where the case is fully stated and argued.

T. EWING,
of Counsel for Plaintiff.

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1957

In the Supreme Court of the United States.

JOHN HOGAN, Plaintiff in Error,
VERSUS
DANIEL D. PAGE, Defendant in Error.

Error to the Supreme Court of State of Mo.

1853

IN THE SUPREME COURT
OF THE UNITED STATES.

JOHN HOGAN, *Plaintiff in error,*

VERSUS

DANIEL D. PAGE, *Defendant in error.*

} Error to the Supreme Court of State of Mo.

This was an action of ejectment, originally commenced in the Land Court of St. Louis County, Missouri, in the year 1857, to recover possession of part of a tract of forty arpents of land in the Grand Prairie Common Field of St. Louis. The cause was tried at the October Term, 1858, and there was a judgment for the defendant, which the Supreme Court of the State affirmed at the March Term, 1862. A bill of exceptions was signed in the Land Court by which it appeared that one Louis Lemonde on the 23d day of May, 1808, presented to the Board of Commissioners, established for the adjudication of titles to land in the Territory of Missouri, a concession by the Spanish Lieut. Governor, dated January 10, 1770, to Auguste Condé of eighty arpents (2 by 40 arpents) of land in the Grand Prairie of St. Louis. This tract embraced the premises in controversy. The Board reciting that Louis Lemonde claimed this land as assignee of Condé, did on Nov. 13, 1811, confirm (p. 8 of printed record) to "the representatives of Auguste Condé forty arpents of land, under the provisions of the 2d section of the act of Congress entitled "an

act respecting claims to land," passed March 3, 1807, and order that the same be surveyed conformably to possession (survey at the expense of the United States) as ascertained by report of survey dated as above, January 10, 1770." The certificate of this confirmation was delivered to Lemonde on the 27th of January, 1825, and is numbered 1276. The survey under it was executed by Wm. H. Cozens, Deputy Surveyor, in 1851. No conveyance from Condé to Lemonde was filed before the Board of Commissioners or produced at the trial in the St. Louis Land Court. Hogan deduced title from the heirs of Lemonde: that is, showed that he had such title to the confirmation as Lemonde had had. There was some evidence of the cultivation of a lot in the Grand Prarie by Lemonde prior to 1803, (p. 15 of printed record) which is not noticed for reasons which will be stated presently. The plaintiff Hogan asked three instructions, to be found at p. 17 & 18 of the printed record, all of which the court refused. They declared in substance that the confirmation was to Lemonde, not to Condé. The court instructed the jury that, upon the evidence adduced, the plaintiff was not entitled to recover. The jury under this instruction found for the defendant. Plaintiff duly excepted and took a suit of error to the Supreme Court of Missouri, which at the March Term 1862 affirmed the judgment of the Land Court. Thereupon the case was brought to this court under the 25th section of the act of September 24, 1789; and the single question presented by the record, is, whether the confirmation made by the Board of Commissioners in 1811 enures to the benefit of such persons as can, *judicially*, establish that they are the representatives of Condé; or is Lemonde, simply by virtue of having presented the claim to the Board, without producing *any* evidence, oral or documentary, of his being the assignee of Condé, the person to whose benefit that confirmation enures?

1315-

The question is not complex. The language of the statute to be interpreted is plain, the practice of the Board of Commissioners under it is suggestive, and the matter has been repeatedly and positively decided by the Supreme Court of Missouri after the most careful argument and mature deliberation. Hundreds of titles to most valuable land repose on the construction of the statute which the plaintiff in error seeks to disturb. These are reasons why that construction should be acquiesced in if the matter were one of doubtful interpretation. But defendant in error believes that if this case were of the first impression, and no consideration could be invoked in favor of those proprietors who from long acquiescence on the part of the bench and bar of Missouri in the construction fortified by so many decisions of the State Court of last resort, have been induced to invest their money in the purchase and improvement of land, still the argument is strongly in favor of the conclusion at which the Supreme Court of Missouri arrived.

It has been said that no attention was due to the fact that Lemonde had cultivated a common field in the Grand Prairie prior to the 20th December, 1803. Persons so cultivating are indeed confirmed in their claims to lots by the terms of the first section of the act of 13th June, 1812; "Provided that nothing herein contained shall be construed to affect the rights of any persons claiming the same land or any part thereof, whose claims have been confirmed by the Board of Commissioners for adjusting and settling claims to lands in the said territory." If then the land occupied and cultivated by Lemonde was the same that was confirmed by the Board to Condé's representatives, all claim of Lemonde under the act of 1812, is at an end, and if it be not the same land, it has nothing to do with this case at all. I pass then

to the examination of the confirmation made by the Board of Commissioners under the acts of 1805 & 1807.

The second section of the act of 3d March, 1807, is in these words: §2. "That any person or persons, and the legal representatives of any person or persons, who on the 20th day of December, 1803, had for ten consecutive years prior to that day been in possession of a tract of land not claimed by any other person, and not exceeding two thousand acres, and who were on that day resident in the territory of Orleans or Lousiana, and had still possession of such tract of land, shall be confirmed in their titles to such tract of land."

This act was supplemental to the act of 2d March, 1805, the 5th section of which provided for the appointment of two persons, who, together with the recorder of land titles for the District of Lousiana, (afterwards territory of Missouri,) should be commissioners "for the purpose of ascertaining the rights of persons claiming under any French or Spanish grant, as aforesaid, or under the two first sections of this act."

The first section of this act of 1805 declared that every person, and the legal representative of any person or persons, who on the 1st of October, 1800, were resident within the territories ceded by the French Republic to the United States by the treaty of 30th April, 1803, and who had prior to said 1st October, 1800, obtained from the French or Spanish Governments, respectively, any duly registered warrant or order of survey for lands lying within the said territory, to which the Indian title had been extinguished, and which were on that day actually inhabited or cultivated by such person or persons, or for his or their use, shall be confirmed in their claims to such lands in the same manner as if such titles had been completed. * * * * *

§ 2. To every person, or the legal representatives of such person, who, being either the head of a family, or twenty-one years of age, had prior to the 20th December, 1803, with the permission of the proper Spanish Officer, and in conformity with the laws, usages and customs of the Spanish Government, made an actual settlement on a tract of land within the said territories not claimed by virtue of the preceding section, or of any Spanish or French grant, made and completed prior to the 1st October, 1800, and during the time when the Government making such grant, had actual possession of said territories, and who did on the 20th December, 1803, actually inhabit and cultivate the said tract of land, the tract of land thus inhabited and cultivated shall be granted. * * * * * *

We may regard the Board of Commissioners as a court of limited jurisdiction, constituted for the purpose of adjudicating between the United States and the several claimants, the title to lands held by inchoate right in the territory of Louisiana (Missouri.) That Board adjudged the title to the land in coutroversy to be in "the legal representatives of Auguste Condé." He had died some time before, but left at least two children shown by this record, viz: Mrs. Sanguinette and Mrs. Lee. (He left in fact about a dozen children.) Who were his legal representatives—his heirs, or a stranger to whom he never made a conveyance, but who was obliging enough to present his claim to the consideration of the Board? *

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* No inference can be drawn from the fact that the confirmation was declared to be "under the provisions of the second section of the act of Congress * * * passed March 3, 1807." No proof was given (so far as the record shows at least) before the Board of Commissioners of any possession of the land claimed, by *Lemonde*, which would entitle *him* and not Condé, to the benefits of that section. It would obviously be too

This question was in 1855 the subject of careful examination by the Supreme Court of Missouri, in two cases—viz: this case of Hogan vs. Page, 22 Mo R., p. 55 & seq., and the case of Mercier vs. Letcher, 22 Mo R., p. 66 & seq. The court was composed of Judges Leonard, Scott and Ryland. These men were eminent for their knowledge of land titles in Missouri. For nearly forty years they had studied the subject assiduously and by common consent were masters of it. Every act of Congress relating to land titles in Missouri was as familiar to them as the statute of frauds is to an English Judge. Besides this, these men brought to this study the finest natural endowments. Before he was raised to the bench of the Supreme Court, Judge Leonard divided the opinion of the bar of Missouri on the point, whether Mr. Geyer, Mr. Gamble, or he, should be regarded as the ablest lawyer in the State. If Judge Scott and Judge Ryland were less conspicuous as baristers, it was because at a comparatively early

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late in 1858 to supply the want of such proof by producing testimony before the Land Court. The Land Court did not sit to supplement the finding and adjudications of the Board of Commissioners, but to determine in any case within its cognisance the legal effect of them. But the only testimony adduced on that occasion (in November 1858) which in the remotest degree bore on this subject of possession was that of Marian Baccané. As far as that testimony goes, Lemonde at any rate could claim nothing under the second section of the act of 1807, for he ceased to cultivate any land there, (see p. 16 of printed record) when the Grand Prairie was abandoned—"I dont remember whether Lemonde quit *then* or *before*"—Now, it is part of the history of the country that the cultivation of lands in the Grand Prairie was abandoned in 1780. On tho 26th of May of that year, (the day after *Corpus Christi* day) occurred an attack by the Indians on the villagers working in the Common Fields. The year 1780 has always been remembered by the old inhabitants of St. Louis as "l'année du coup" (the year of the attack,) and from that period the cultivation of the Grand Prairie Common Field which was the most distant from the village, was abandoned. See Stoddard's sketches of Louisiana, p. 79; Peck's Western Annals, pp. 244, 245, 246 and 247.

age they became Judges of the Circuit Court and so continued until placed on the bench of the Supreme Court. The court in the two cases decided in 1855 was unanimous. Its opinion is entitled to the more attention because in coming to it a former opinion of the same court was modified or overruled. (Boone et al. vs. Moore, 14 Mo, 420.) When that case was decided (in 1851) the Supreme Court was composed of Judges Napton, Ryland and Birch. Judge Napton in delivering the opinion of the court evinced great dissatisfaction with the case of Bissell vs. Penrose, 8 How. 317. But while testifying this feeling towards the opinion of this court in that cause, *as he then understood it*, he yielded to its supposed authority. Judge Ryland when dealing with these cases of Hogan vs. Page and Mercier vs. Letcher, more than four years later, evinced, it is submitted, much finer and nicer powers of criticism; for he reconciled all the authorities in the ablest and most satisfactory manner, showing that the decision in the case of Boone vs. Moore was correct, though not for the reasons given in the opinion of the court; and that the decision of the Supreme Court of the United States in the case of Bissell vs. Penrose had, from haste or otherwise, been misapprehended by Judge Napton. He was himself a member of the court which gave that decision, but he had nothing to retract, when giving the more extended and careful exposition of the law, to be found in the 22d Mo. pp. 55 & seq. and 66 & seq.

The same question came before the Supreme Court of Missouri in 1858, in the case of Papin vs. Massey, reported 27 Mo. R., p. 445. The Supreme Court then consisted of Judges Scott, Napton and Richardson; but the last having been of counsel took no part in the adjudication of the case. Judge Napton concurred with Judge Scott, who delivered the opinion of the court. Particular attention is asked to the remarks of Judge Scott, to be

found at pp. 450-1. They form an admirable pendant to those of Judge Reyland, in the cases reported in the 22d Vol., and the concurrence of Judge Napton shows his abandonment of anything in the case of Boone vs. Moore, which was supposed to sanction a different view.

In 1863 the same question came again before the Supreme Court of Missouri, then composed of Judges Bates, Dryden and Bay. These all concurred in re-affirming the decisions of 1855 and 1858, in the case of the St. Louis Gas Light Co. et al. vs. Reiss, 33 Mo. R., p. 551. In delivering the opinion of the court in this cause, Judge Bates, (p. 554,) treats the matter as settled, and goes into no argument to prove that it is settled correctly.

It may be permissible to add that at the October term 1858, the case of Gaven vs. Vohlinger was tried in the United States Circuit Court for Missouri. In this case Gaven claimed part of the land which was confirmed to the legal representatives of J. B. Provenché, as shown at p. 552 of the 33d Vol. Mo. Rep., last quoted. He deduced title from Calvin Adams, and claimed that Calvin Adams was the confirmee of the grant. The court (Judges Wells and Treat) held, that that confirmation was to Provenché, if he was living and had not conveyed the claim. If he had conveyed the claim, then the confirmation was to his assignee. If he had not and was dead, then it enured to his heirs—*precisely as it is laid down by Judge Bates* at pp. 554-555. In the case of Gaven vs. Vohlinger, upon these views being expressed by the court, the plaintiff proved that Calvin Adams and those claiming under him had been in continuous possession of *the part of the confirmation* claimed in that action from 1805 until a short time before the commencement of the suit, and succeeded upon this proof. This is of course an unreported case, and is only a *nisi prius* decision; but it deserves attention nevertheless. Judge

1361

Wells is lately dead; but Judge Treat may be referred to for the correctness of this statement. The undersigned was of counsel for Gaven in that cause. Mr. Bates, now Attorney General, appeared for defendant.

There is another case now pending in the Supreme Court for Missouri, entitled, Connoyer vs The Washington University, in which the St. Louis Land Court laid down the law in favor of the University, in conformity with the decisions above quoted. The facts are these: Col. O'Fallon had made a donation of land to the Washington University, including part of the survey 1485; which was of a confirmation made to the legal representatives of one Du Bruisseau. Connoyer claimed under the person who presented this claim to the Board; Col. O'Fallon under the legal representatives of Du Bruisseau. The Land Court gave judgment for the Washington University, to which Col. O'Fallon had made this conveyance towards its endowment: and, of course, the Supreme Court of Missouri cannot choose but confirm the judgment, unless, before the case is reached for argument in that court, this high tribunal should declare the law differently.

It will have been remarked that I have cited the opinions of the Supreme Court of Missouri, and of the U. S. Circuit Court for the District of Missouri, instead of attempting, in my own words, to enforce the same views. It seemed to me more becoming as well as more effective, to do this. I cannot hope to add anything to the arguments of Judges Scott, Leonard, Napton and Ryland, all of whom concurred cordially and unreservedly in the views expressed by Judges Ryland and Scott; nor to the terse and emphatic summary by which the present court, consisting of Judges Bates, Dryden and Bay, declared their acquiescence in the same views. I quote in aid of these the views of Judge Treat and the late Judge Wells, and feel that, short of the authority of this

court of last resort, it is impossible for names more imposing to be cited.

But it was said in argument in the State Court that the decisions of the Supreme Court of the United States, in the cases of Strother vs. Lucas, Stoddard vs. Chambers, and Bissell vs. Penrose, were opposed to those of the Supreme Court of Missouri on this point; and it may not be amiss to say a few, a very few words in this connection.

In the case of Strother vs. Lucas (12 Peters 410) the Board of Commissioners confirmed the land in controversy to "Auguste Chouteau, assignee of Hyacinth St. Cyr." (p. 418.) The statement of the case shows that the land was originally granted to Gamache; that he sold the claim twice, viz, first to Chancellier, and secondly to St. Cyr. St. Cyr took possession and held it, and sold to Auguste Chouteau, who presented the claim for confirmation to the Board of Commissioners, sitting under the acts of 1805 and 1807, together with the evidence of his derivative title from St. Cyr. The Board confirmed the claim to "Auguste Chouteau, assignee of St. Cyr." The party claiming under Chancellier did not present his claim to this Board at all, and accordingly, by the terms of the 4th section of the act of 1805, and the 5th section of the act of 1807, was forever barred as against all persons claiming the same under those acts. The recorder, under the act of 1812, having reported that these lots had been granted, cultivated, and ought to be confirmed, and apparently not adverting to the fact that they had been confirmed already, Congress by act of April 29th, 1816, confirmed them to the representatives of the original grantees, so that the defendants in the case held under the elder confirmation, and the plaintiffs under the junior. The remarks of the Supreme Court on this feature of the case are to be found at pp. 453-5 of 12 Peters. On page

1363

458 appear the remarks of Mr. Justice Baldwin in relation to the effect of the confirmation. The plaintiff maintained that the confirmation to "August Chouteau, assignee of St. Cyr," enured neither to the benefit of Chouteau or St. Cyr, but *to the original concessionary leaving open the question who was his legal representative.* The Supreme Court of the United States repudiated this view, and declared, that "in the present case" the confirmation was to the person who "made and *proved* his claim before" the Board; that is, who showed not only that there was a claim to confirm, but who was the owner of that claim when confirmed (p. 458 12 Peters.) Now, let it be remembered what the terms of the confirmation "in the present case" were, and there can be no difficulty in understanding and applying the language used by the Supreme Court.

In many cases the Board of Commissioners had before them not only the original concession, but the complete derivative title, showing that the person presenting the claim, *proved* his representative character. In some of these cases the Board confirmed the claim directly to the person in whom the title thus appeared to be, describing him, as in the case of Strother vs. Lucas, as the assignee of the original concessionary. In other cases, they entitled the case as one in which "A, assignee of B, &c., claiming, &c., presents, &c." When a complete chain of title was thus presented, the Supreme Court of the United States has been of opinion that the confirmation enured to the benefit of the claimant. Stoddard vs. Chambers, 2 How. 284; Bissell vs. Penrose, 8 How. 317. When the Board in terms confirmed the claim to "A, assignee of B," there could be no escape from the conclusion that the Board determined as well the representative character of the claimant as the validity of the original claim. But where there was no complete claim of title, the Board very naturally and

properly paused; and confirming the original claim, left open the question of the representatives of the original claimant. And this led to a judicial inquiry whereever a title was asserted under such a confirmation. The principles on which such an inquiry should be conducted were declared by the Supreme Court of Missouri, in St. Louis Gas Light Company et al. vs. Reiss., 33 Mo. R., pp. 554-5.

I forbear to cite the cases from the 3d Vol. of the State Papers, which are referred to by the Supreme Court in Strother vs. Lucas, 12 Pet. 458, to show the practice of the Board of Commissioners in relation to original and derivative titles to claims presented for confirmation. The Supreme Court is already familiar with these cases, and if there be any desire to make the reference, the citation already quoted is abundantly sufficient.

The number of cases appearing in which the party out of possession seeks to recover against an ancient occupation, furnishes some means of judging to what a degree land titles in Missouri would be disturbed by overturning the decisions of the Supreme Court of Missouri on this subject, and by extending far beyond their present scope those of the Supreme Court of the United States. As matters now stand, the decisions of both courts, are, as they ought to be, in full harmony. The Supreme Court of the U. States has with a nice discrimination pointed out the effect of a certain class of confirmations; that is to say of such as were made in the case of Stoddard vs. Chambers and Bissell vs. Penrose. As to such cases as that in Strother vs. Lucas, the language of the confirmation was so precise and positive as to leave no room for construction. A third class remains, viz: that including such cases as the present, and that of the Gaslight Company et al. vs. Reiss. This class is evidently not embraced by the letter or the spirit of the decisions touching the two other classes; and with

respect to this class the Supreme Conrt of the United States has not yet spoken. But the Supreme Court of the State of Missouri during a period of ten years has repeatedly considered this class of cases, and determined the effect of such confirmations. Its composition has changed in that interval, but its views have remained the same, and a former opinion given by Judge Napton, supposed to militate with those more lately declared, has been, with his cheerful concurrence, abandoned in favor of the masterly criticism and analysis of the subject by Judge Ryland in 22 Mo R. p. 55 & seq. When to it is added that this criticism and analysis met the full assent of the United States Circuit Court, composed of Judges Wells and Treat, * it is felt that it would be a waste of time to add another word in support of the settlement of this important question as now fixed by the Supreme Court of Missouri.

Respectfully submitted.

THOMAS T. GANTT,

of counsel for Defendant in error.

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* Judge Catron was not present at the Fall Term, 1858, of the United States Circuit Court for Missouri.